



Planning Department

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**MEMORANDUM**

**To:** Planning Board

**Date:** October 4, 2011

**From:** Roland Bartl, AICP, Planning Director

**Subject:** Possible Zoning Changes for 2012 ATM

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**1. Signs (ZBL - Section 7):**

Wait and see what EDC proposes.

**2. Change Definition of Agriculture (ZBL – Section 3.2.1):**

The Acton zoning bylaw permits by right Agriculture in all zoning districts. The current definition of Agriculture is as follows (emphasis added):

3.2.1 Agriculture - **On a parcel of more than five acres: Agriculture, including the boarding, keeping or raising of livestock;** horticulture (including without limitation the growing and keeping of nursery stock and the sale thereof, whether such nursery stock is grown in the ground or in burlap, containers, or other suitable manner, provided it is nourished, maintained and managed while on the premises); floriculture; or viticulture; the use of buildings and structures for the primary purpose of these activities, including the sale of farm products. *All of the aforesaid shall be subject to and in conformance with the definitions and requirements for these activities under MGL Ch. 40A, s. 3.*<sup>1</sup> **On a parcel of two acres or more:** Cultivating, harvesting and storing of field crops, produce or fruit, and storage of farm equipment that is necessary for these activities; **the boarding, keeping and raising of not more than one horse, goat or sheep, plus its offspring up to one year of age.**

A 2010 amendment to M.G.L. Ch. 40A, § 3 modified the State exemptions for Agriculture and puts Acton's definition out of sync with State law.<sup>2</sup> The State Agriculture exemption now reads (emphasis added – 2010 change in bold; other paragraphs of note in italic underlined):

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<sup>1</sup> The sentence in section 3.2.1 emphasized above in *italic underlined* seeks to capture (without restating all) the details of the State law Agriculture exemption dealing among other things with the sale of Agricultural products (where grown, when sold, how much of proceeds, etc), and the cross-reference to another statute where agriculture is further defined – see citation of State law on next page.

<sup>2</sup> M.G.L. ch. 40A, § 3 was amended by 2010, 240, Sec. 79 effective August 1, 2010 to add the 2 acre/\$1,000 exemption (i.e. it inserted “or to parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars”). This is a substantially broader exemption than in the prior version of the statute which allowed agriculture, aquaculture, etc. to be limited to 5 acres or more.

“No zoning ordinance or by-law shall (...) prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, except that all such activities may be limited to parcels of 5 acres or more **or to parcels [of] 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars** in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture. For such purposes, land divided by a public or private way or a waterway shall be construed as 1 parcel. For the purposes of this section, the term “agriculture” shall be as defined in section 1A of chapter 128, and the term horticulture shall include the growing and keeping of nursery stock and the sale thereof. Said nursery stock shall be considered to be produced by the owner or lessee of the land if it is nourished, maintained and managed while on the premises.”

MGL Ch. 128, section 1A contains the following definition of "agriculture":

“Farming” or “agriculture” shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, **the raising of livestock including horses, the keeping of horses as a commercial enterprise**, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

As a result of the 2010 statute amendment, the agricultural use exemption in MGL 40A, S. 3 applicable to livestock (horses, poultry, swine, cattle, bees, etc.) on parcels of two acres or more is now substantially broader than the Acton zoning bylaw’s exemption applicable to horses, goats and sheep for parcels of two acres or more. The statute trumps the bylaw in this respect, and the bylaw should be changed accordingly. Also, note the (older) piece in the statute that

combines land on opposite sides of a street, way, or stream as one parcel for purposes of the agriculture exemption.

**3. Special Permit Granting Authority – Site Plan and Use Special Permits:**

Is there a desire this year to discuss, again, the reassignment of site plan and use special permit from the Board of Selectmen to the Planning Board? I had prepared a complete draft article for such a change last year. But, it never left this office.

**4. Mobile food vendors:**

The Acton ZBL, in section 1.3.3 defines a building as follows (emphasis added):

“1.3.3 BUILDING: A STRUCTURE enclosed within exterior walls, built or erected with any combination of materials, **whether portable or fixed**, having a roof, to form a STRUCTURE for the shelter of persons, animals, or property.”

In recent years the number of inquiries from mobile food vendors and retailers has increased as to where they might set up shop (some may have set up shop for short time periods without asking). We also had one inquiry about a mobile office unit. It is my sense that this is not what Acton wants on a regular ongoing basis (outside of fairs, fests, and festivals; mobile lunch services at construction or other employment sites; or mobile office trailers at construction projects). Generally, our line is that food vending and retailing has been that a commercial use requires vehicle parking and a site plan special permit. This kept them at bay. But our wall of resistance is a flimsy one. Some could actually go for a site plan special permit, or in the alternative set up shop on an existing commercial site with proof that there is already enough parking to accommodate the additional use. For many locations, there appears nothing that we could use to stop someone who wanted to really pursue such a venture.

Does Acton want to allow mobile food vendors, mobile retailers, and mobile offices, or not?

**5. Change zoning of Brookside Shops from R-8 to LB.**

The land where Brookside Shops is now on was zoned for business until 1990, and then rezoned to R-8 as part of a larger comprehensive zoning change for all of Great Road that grew from the 1990 master plan. Brookside Shops was built in or around 2004 under the 8-year grandfather protection of MGL Ch. 40A, S. 6 for approved subdivision plans, stayed by years of litigation. Pretty much everything there is now nonconforming – the buildings, the use, parking, signage, etc. It is time to make piece with history and rezone the parcel back to business, i.e. to Limited Business, which is the nearest and adjacent business zoning district in that area. Some things will remain non-conforming, but at least the uses will conform and signage can be dealt with w/o variances.

**6. Houses on non-conforming lots – additions/rebuilding (ZBL Section 8 subsections and MGL Ch. 40A, S. 3):**

The subject of zoning non-conformities is notoriously complicated and difficult. This deals with questions surrounding the extension of houses on lots that are nonconforming in area and/or frontage, and with demolition and reconstruction of houses on such nonconforming lots. Recent cases decided by the Acton Board of Appeals have changed the lay of land as we knew it:

- We used to allow additions to dwellings on nonconforming lots as long the addition did not violated setbacks. We can longer additions on non-conforming lot w/o a ZBA hearing and special permit as it is deemed an expansion of a nonconforming use or structure.

- ZBL – Section 8.3.6, adopted only a few years ago, is intended to allow the demolition and reconstruction by right of a dwelling on a non-conforming lot as long as the new dwelling is a replacement only of the same square footage the previously existed. Before its adoption there was no way outside of a variance to do so. The section as written was, however, intended to prohibit the demolition and mansionization, i.e. replacement with a much bigger dwelling. This section has been effectively laid on ice opening the door to mansionization.
- There are some conflicting subsections in ZBL – section 8, some disconnects on dealing with non-conforming lots and structures between the Acton ZBL and the Zoning Statute, a slew of convoluted case laws, and some creative lawyers who argue effectively for their clients before the ZBA.

A review and adjustment is in order. This needs work in consultation with Town Counsel. (Notes: Statute S. 6 finding; ZBL 8.3.6 v. 8.1. ZBA decision, nonconforming uses and structures, mansionization. Look at recent ZBA cases. Look into the recent Norwell and Edgartown cases affecting houses on non-conforming lots.)

#### **7. Flood Plain Regulations (ZBL - Section 4.1):**

A year or two ago we (Town Meeting) made changes to the flood plain regulations based on FEMA suggestions/requirements. After those were done, FEMA sent us another note on the changes made. I need to look at the file and see if anything comes up as required. This is a place holder until I get to look this up.

#### **8. Delete most regulations on political signs (ZBL – Section 7.5.12):**

Under signs allowed by right without any administrative permit, section 7.5.12 currently reads:

“Political SIGNS – In addition to WINDOW SIGNS, one SIGN may be ERECTED on a LOT displaying a political message. Such a SIGN shall be stationary and shall not be illuminated. Its height shall not exceed 4 feet and its DISPLAY AREA shall not exceed 6 square feet. SIGNS associated with a political event such as elections, primaries, balloting, or voter registration shall not be ERECTED earlier than 25 days prior to such event and shall be removed within 5 days after the event. SIGNS not associated with a particular political event shall be ERECTED for a period of no longer than 30 days, or if ERECTED for a longer duration shall not exceed 2 square feet in DISPLAY AREA. Such SIGN may be a MOVABLE SIGN.”

The Acton Zoning Bylaw is built on the tenet that if something is not specifically allowed (or closely similar to something specifically allowed) then it is prohibited. Therefore, political signs should remain allowed by right and w/o any administrative permits. However, the restrictions in 7.5.12 are really not enforceable. They only function as guidelines to those who want to be “good” members of the community. The time limits are regularly ignored especially before elections, as is the limit of **one** sign per lot. The result is arguments between candidates over this bylaw section rather than discussion of substance. Limitations on size have not been violated much or at all, but if they were, we would probably not take enforcement action, either. Political free speech is a big trump card.

#### **9. Clarify definitions of lot access, width and frontage and as applied to minimum requirements (ZBL – Sections 1.3.1 5.2):**

There are some lot configurations where reasonable people can disagree as to whether or not they comply with the minimum dimensional requirement of the zoning bylaw. Some of this

arises from differences in views and opinion between “how things were interpreted in the past” (my position) and a newcomer’s view that is different (Scott), but neither Scott nor I can be totally convinced of our own positions. This should be resolved in a zoning bylaw amendment. We would bring some case examples and draft clarification amendments.

**10. Is there such a thing as too many garages? If so, how many garages are too many, and where?**

The ZBL – Section 3.8.1.1 allows garages and car ports as accessory to dwellings in this context:

“Private garage or carport for not more than four motor vehicles, solar system, greenhouse, tool shed or barn; swimming pool or tennis court provided that such recreational facilities are used only by the residents and their guests.”

Recently, the ZBA held in a decision that this section only applies to garages that are integrated in the dwelling, in other words: As many garages as anybody would want as long as they are integrated in the building. What does integrated mean – down under, under one roof line, simply attached so as to make a contiguous structure?

How many garages do people reasonably need? Should Acton regulate garages?

What about separate free standing garages? After the ZBA decision these are clearly subject to section 3.8.1.1.

How do we – or should we – address the other free-standing barns that people have and also use as garages?

Redefine, refine, regulate – or hands-off?

